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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,994	07/25/2001	Jean-Paul Cervený	PVMTI	4697

7590 11/03/2004

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EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/889,994	CERVENY, JEAN-PAUL	
	<b>Examiner</b>	<b>Art Unit</b>	
	MONZER R CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/02/2002</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

**This general office action is in response to the application filed on 07/25/2001**

#### ***Claim Objections***

1. Claims 1-29 are objected to because of the following informalities: In claim 1, numbered lines 10-11, applicant uses the phrase "characterized in that". According to standard claim language, the term "wherein" should replace the above phrase.

Correction is needed for all claims.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, numbered line 6; applicant uses the limitation "the screwing machine" without providing an explanation in the specification. As a result the meaning of this feature is not understood. Does the applicant mean bottling machine? Explanation is needed to understand the meaning of claim 1. In examining this claim, the limitation "the screwing machine" is considered equivalent to "bottle stoppering apparatus" mentioned in the Petho (U.S.P.N. 4,958,649) reference in col.12, lines 54-56.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1- 8, 10-20, 24-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Petho (U.S.P.N. 4,958,649).

With respect to claim 1, the ('649) reference discloses an apparatus for sterilizing articles such that stoppers to be treated move in a spiral path (col.4, lines 51-60, the stoppers travel in a winding and continuous curve around a central point) within the apparatus and between the inlet (figure 1, 8) and the outlet (figure 1, 9). The ('649) reference also mentions that the apparatus is placed upstream of the screwing machine (col.12, lines 45-56). Both machines are connected such that it is inherent that they operate at the same rate in order to sterilize the stoppers in the most efficient method.

With respect to claims 2-8, 10-20, 24-27 and 29, the ('649) reference teaches the following: three successive sterilizing, rinsing, and drying sections (col.9, lines 53-55, col.10, lines 16-17 and lines 41-46): parts are set in motion by friction against a rotating member (the rotational motion of the conveying system will inherently set the parts in motion due to friction against the rotating member): a conveying rotational system formed of a hollow cylindrical sleeve (figure 3, 13) secured to a stationary drum (figure 3, 13, 4 and 3) and wound around the exterior wall (exterior wall of 13) such that the slideway has a U shape profile (partial part of 13 is a U shape) open toward the sleeve and a height shorter than that of the stoppering parts so that the friction between the rotary drum and the stoppering parts causes them to move: the bottom of the spiral screw includes a great many holes (col.5, lines 27-31) with many nozzles ( when steam is injected through the holes, then they are considered nozzles) to inject a sterilizing

solution: the holes are directed in an inclined direction (depending on the degree of rotation of the conveying system such a limitation is inherent to the apparatus of the applied reference) with respect to a radius of the drum: a suction cavity (figure 2, 3 where fluid collects) that is inherently offset with respect to the vertical plane of the symmetry of the drum due to it's rotation: arrangements are made to prevent the liquid from running over the ends of the drum (col.8, lines 54-57): the spiral slideway provides transition arrangements between the different sections (each plate can inherently depending on the treatment cycled can be considered as a transition arrangement or as mentioned in col.13, lines 18-19): the sterilizing solution is injected by a nozzle into a pressure-equalizing chamber (figure 2, wall of 13 and external wall of 1): a groove is provided on the interior face of the rotary drum (col.13, lines 11-15): the stoppering parts are set in motion by a driving fluid (the injected hot water will inherently result in the motion of the stoppering parts): the use of hot water (col.9, lines 66-68): the sole of the slideway having openings for injecting the driving fluid (the bottom part of 13 is equivalent to the sole): the slideway is made by a profiled separation (figure 2, 40): the sole is a flexible metal strip (inherent limitation since steam is injected within the apparatus) wound between the separations and resting on two shoulders (figure 1, 45): modules of identical design assembled in series and closed at both ends (col.12, lines 45-48): a hopper for collecting rejections is provided at the outlet of each module (figure 1, 9 and figure 2 where liquid is collected in the bottom part below 13)at least one slit is provided at the outlet of each module and on its sleeve (the draining holes in the conveying system mentioned in col.5, lines 27-31 are equivalent to the slits): a standard

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module with several turns such that the upper part of the last turn of which carries out the function of rinsing with air and the previous turns or front turns performing the sterilizing function (all such features are inherent since depending on the degree of rotation and on the cycle, the upper part of the last turn of 13 carries the function of rinsing and the previous turns of 13 are for sterilizing the stoppering parts): orifices (figure 2, 10-12) for the passage of liquid-injection nozzles (col.5, lines 27-31) oriented at a driving angle (inherent feature of the rotating drum) are provided in the sole of each turn: one of the orifices (figure 2, 10) is provided in the bottom part of each turn (figure 2, plate 13 above 10) on the vertical plane of symmetry: a cylinder coaxial with the cylindrical sleeve delimits a cylindrical discharge space (figure 2, 3 and bottom of 13): and an air inlet inside the module distributes air to one air-injection nozzle for driving the stoppering parts, then to at least one second air-injecting nozzle for internal rinsing of the stoppering parts, then to at least one third air-injection nozzle for external rinsing of the stoppering parts (col.5, lines 27-31 and col.10, lines 43-44 such that each inlet represent a nozzle through which air is injected).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 22-23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petho (U.S.P.N. 4,958,649).

With respect to claims 22-23, the ('649) reference does not explicitly indicate whether the apparatus is vertically or horizontally arranged, however; such arrangements are a matter of choice of design that is well within the scope of the artisan.

With respect to claim 28, the ('649) reference does not explicitly disclose the shape of the discharge holes, however, choosing a shape for the discharge holes is a matter of choice of design that is well within the scope of the artisan.

8. Claims 9 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petho (U.S.P.N. 4,958,649) in view of Zucchini et al (U.S.P.N. 5,098,447).

The teachings of the ('649) reference have previously been set forth with respect to claims 1- 8, 10-18, 20, 24-27 and 29. However, with respect to claims 9 and 21, the ('649) reference fails to teach filtering, heating and recycling the sterilizing liquid. The ('447) reference, which is in the art of sterilizing stoppers by using aqueous solution of hydrogen peroxide, teaches recycling the liquid sterilant (col.3, lines 53-56) such that in

order to sterilize the stoppers it is intrinsic to filter and reheat hydrogen peroxide. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of the ('649) reference to include recycling means as disclosed in the ('447) reference since such a modification is a matter of choice of design of the artisan.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Monzer R. Chorbaji *MRC*

Patent Examiner

AU 1744

10/29/2004

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